HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.862 OF 2007

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Between:

A.S.S.Prakash Rao .....Appellant

AND

The Divisional Security Commissioner,
Railway Protection Force,
S.C.Railway, Vijayawada and others. .....Respondents

:: J U D G M E N T ::

Counsel for the apellant : Sri J.M.Naidu

Counsel for the respondents : Sri Gouri Shanker Sanghi

11th October, 2007

Per G.S.Singhvi, C.J.

Having failed to persuade the learned Single Judge to entertain

his challenge against the order of removal from service passed by the Divisional Security Commissioner, Railway Protection Force, Vijayawada (respondent No.1) and the appellate and revisional orders passed by the Chief Security Commissioner, Railway Protection Force, Hyderabad (respondent No.2) and the Director General of Railway Protection Force, New Delhi (respondent No.3) respectively, the appellant has filed this appeal under Clause 15 of the Letters Patent.

The appellant joined the services of the Railway Protection Force as Constable in the year 1980. Between June, 1981 and January, 1990, he unauthorisedly absented from duty on seven different occasions and suffered punishments like reduction of pay, withholding of annual increments and censure. The details of the appellant's absence and the punishments imposed on him are as under:

"1. Absent from 21-5-1989 to 26-5-1989 - Pay reduced by one stage for a period of one year (NR).

2. Absent from 6-9-1989 to 7-9-1989 - His next increment is stopped for a period of one year.

3. Absent from 7-11-1989 to 14-11-1989 - Pay reduced by one stage for a period of one year (NR).

4. Absence on 19-11-1989 - He is censured.

5. Absence from 8-12-1989 to 12-12-1989 – He is censured.

6. Absence from 7-1-1990 to 19-1-1990 - His increment due is withheld for a period of six months (NR).

7. Absence from 9-3-1990 to 30-3-1990 - Increment withheld for a period of one year (NR)."

On 11-5-1990, another enquiry was instituted against the

appellant under Section 9(1)(i) of the Railway Protection Force Act, 1957 read with Rule 153 of the Railway Protection Force Rules, 1987 (for short, 'the Rules') on the following charge:

"Sri A.S.S. Prakasarao, Con/041/TTT is hereby charged for serious misconduct in that he remained absent unauthorisedly for the following periods:

(i) Absent on 22-1-1990 = one day.
(ii) Absent from 24-1-1990 to 4-2-1990 = 12 days
(iii) Absent from 9-3-1990 to 30-30-1990 = 22 days
(iv) Absent from 13-4-1990 to till date."

The enquiry officer submitted report dated 31-7-1990 with the finding that the charge of unauthorised absence is proved against the delinquent. Thereafter, respondent No.1 passed order dated 7-8-1990, whereby he imposed the penalty of removal from service on the appellant. The appeal and revision preferred by the appellant against the order of punishment were dismissed by respondent Nos.2 and 3 respectively vide orders dated 6-2-1991 and 18-9-1998.

The appellant challenged the order of punishment as also the appellate and revisional orders in Writ Petition No.9823 of 1999 mainly on the ground of violation of the rules of natural justice. He claimed that the first and second spells of absence specified in the charge sheet had been regularised and for third incident of absence, he had already suffered punishment of stoppage of one increment and, therefore, the enquiry officer and respondent Nos.1 to 3 gravely erred by relying on all the four incidents of absence for the purpose of holding him guilty and imposing the punishment of removal from service.

The learned Single Judge applied the theory of absence of prejudice and declined to interfere with the action taken by the disciplinary authority which, as mentioned above, was approved by the appellate and revisional authorities, and held that even though one of the allegations which constituted part of the charge sheet ought not to have been made the subject matter of second enquiry, there is no

warrant for exercise of jurisdiction by this Court under Article 226 of the Constitution of India to interfere with the punishment imposed on the petitioner (the appellant herein).

Sri J.M. Naidu, learned counsel for the appellant made efforts to convince us that the view taken by the learned Single Judge on the applicability of the doctrines of proportionality and the theory of absence of prejudice is erroneous and the order of the appellant's removal from service is liable to be quashed because the disciplinary authority considered an allegation which had already become subject matter of regular departmental enquiry and for which the appellant had already been punished. He further argued that the earlier incidents of punishment could not have been taken into consideration because the appellant was not put to notice and also because the absence had been regularised by grant of leave without pay.

We have considered the arguments of the learned counsel and have carefully scanned the record. We have also gone through the original record produced by Sri Gouri Shannkar Sanghi, learned counsel for the respondents.

In our opinion, the appellant's attempt to invoke sympathy of the Court by claiming that the allegations of absence from duty are trivial and his earlier absence on seven occasions had been regularised by grant of leave without pay does not commend our approval. There cannot be any doubt that the degree of discipline required to be observed by the men in uniform is substantially different than civilian employees and authorities entrusted with the task of ensuring discipline in the Force have substantial discretion in the matter of imposing punishment on the officers and employees found guilty of misconduct. As human beings, the concerned officers may take a compassionate view of minor misconducts committed by an employee, but if such acts are repeatedly committed, the disciplinary authority is bound to take stringent view of the matter and award suitable punishment so that the disease of indiscipline may not spread in the

Force. Therefore, the leniency or compassion shown by the disciplinary authority by not ordering removal of the appellant on previous occasions and regularising the period of absence by grant of leave without pay cannot justify an inference that the misconduct committed by the appellant had been condoned.

It is true that the previous acts of misconduct committed by the appellant do not find reflection in the orders impugned in the writ petition, but we do not have any doubt that the learned Single Judge had rightly taken note of the previous punishments for determining whether this Court's power under Article 226 should be exercised for ordering reinstatement of a man in uniform, who repeatedly indulged in acts of indiscipline. It must be remembered that the power of this Court under Article 226 is not required to be exercised ex debito justiatiae in matters involving challenge to the action taken by the public authorities to enforce discipline in the services and there will be ample justification to decline judicial interdiction in such matters unless the aggrieved employee pleads and proves prejudice or demonstrates that violation of the statutory rules or the rules of natural justice has resulted in substantial failure of justice. In this context, it is apposite to observe that till early 80's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premises that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial orders and administrative actions, which visit the petitioner with evil consequences, unless he not only pleads, but also proves that his cause has been prejudiced on account of non-recording of reasons by the concerned authority. In this connection, reference can appropriately be made to the judgments of

the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[1], **R.C.Sharma v. Union of India**[2], **Sunil Kumar Banerjee v. State of West Bengal**[3], **K.N. Tripathi v. State Bank of India**[4], **Mumtaz Hussein Ansari v. State of U.P.**[5], **Kashinath Dikshita v. Union of India**[6], **Chandrama Tiwari v. Union of India**[7], **Managing Director, ECIL v. B. Karunakar**[8], **Krishanlal v. State of Jammu and Kashmir**[9], **State Bank of Patiala v. S.K. Sharma**[10], **S.K. Singh v. Central Bank of India**[11], **State of Uttar Pradesh v. Shatrughanlal**[12], **Food Corporation of India v. Padamkumar Bhuvan**[13], **State of Uttar Pradesh v. Harendra Arora**[14], **Oriental Insurance Company v. S. Balakrishnan**[15], **State of Uttar Pradesh v. Rameshchand Manglik**[16]; **Canara Bank v. Debasis Das**[17], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[18], **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[19], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[20], **Punjab National Bank v. Manjeet Singh**[21], **P.D. Agrawal v. State Bank of India**[22] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench of the Supreme Court considered conflicting views expressed in **Union of India v. Mohd. Ramzan Khan**[23] and **K.C. Asthana v. State of Uttar Pradesh**[24] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench was whether report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Constitution

Bench also considered the following ancillary/incidental questions:

> "(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?
>
> (ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?
>
> (iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?
>
> (iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?
>
> (v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?
>
> (vi) From what date the law requiring furnishing of the report, should come into operation?
>
> (vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?"

After answering the main question in affirmative, the Supreme Court considered the ancillary questions and answered above reproduced question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made

no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Court further held:

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case** (supra), the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

> "i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.
>
> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.
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> (iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M.**

Degree College (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be made a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court held that the principles of natural justice cannot be put in straight jacket formula and in a case involving violation of the rules of natural justice, the Court can insist upon proof of prejudice before setting aside the order impugned before it. The Supreme Court further held that the Court may invoke "useless formality theory" and decline to interfere with the order under challenge if the petitioner fails to prove prejudice.

In **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments

upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given."

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court reiterated that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460]**, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the

Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

> "A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

In the present case, the appellant has not denied that he had suffered punishment on earlier occasions on the proved charges of unauthorised absence from duty. Therefore, it is not possible to accept the argument of Sri J. M. Naidu that the cause of his client has been prejudiced on account of consideration of the previous punishments.

The applicability of the doctrine of proportionality

In **Ranjit Thakur v. Union of India**[25], the Supreme Court applied the 'doctrine of proportionality' and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise,

within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G. Ganayutham**[26], the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary

judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **State Bank of India v. Samrendra Kishore Endow**[27], **State of Uttar Pradesh v. Ashok Kumar Singh**[28], **State of Uttar Pradesh v. Nandkishore Shukla**[29], **State of Punjab v. Baxi Singh**[30], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[31], **Union of India v. J.R. Gheman**[32], the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

I n **Om Kumar v. Union of India**[33], the Supreme Court considered the applicability of the 'doctrine of proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra)**, B.C. Chaturvedi v. Union of India**[34] and held:

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could

award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[35], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional."

(underlining is ours)

In **Director General, RPF v. Ch. Sai Babu**[36], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

The views expressed in the above noted cases have been reiterated in the recent judgments – **Hombe Gowda Educational Trust v. State of Karnataka**[37], **Commissioner of Police v. Syed Hussain**[38], and **State of U.P. v. Sheo Shanker Lal Srivastava**[39].

If the appellant's case is examined in the backdrop of the principle laid down in **B. Karunakar**'s case (supra) and other judgments, it is not possible to agree with Sri Naidu that notwithstanding the recalcitrant attitude exhibited by his client by constantly absenting from duty without prior permission, the learned Single Judge should have ignored the past record of his client and interfered with the discretion exercised by respondent No.1 to order his removal from service.

In our considered view, the punishment imposed on the appellant is neither unreasonable and harsh nor shockingly disproportionate and the learned Single Judge did not commit any error by refusing to nullify the same.

In the result, the appeal is dismissed.

G.S.SINGHVI, C.J.

11th October, 2007

C.V.NAGARJUNA REDDY,J.

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[1] (1969) 3 SCC 392
[2] (1976) 3 SCC 574
[3] (1980) 3 SCC 304
[4] (1984) 1 SCC 43
[5] (1984) 3 SCC 295
[6] (1986) 3 SCC 229
[7] (1987) Suppl. SCC 518
[8] (1993) 4 SCC 727
[9] (1994) 4 SCC 422
[10] (1996) 3 SCC 364
[11] (1996) 6 SCC 415
[12] (1998) 6 SCC 651
[13] (1999) SCC (L&S) 620
[14] (2001) 6 SCC 392
[15] (2003) 11 SCC 734
[16] (2003) 3 SCC 443
[17] (2003) 4 SCC 557
[18] (2004) 1 SCC 281
[19] (2005) 2 SCC 237
[20] (2005) 3 SCC 409
[21] (2006) 8 SCC 647
[22] (2006) 8 SCC 776
[23] (1991) 1 SCC 588
[24] (1988) 3 SCC 600
[25] (1987) 4 SCC 611
[26] (1997) 7 SCC 463
[27] (1994) 2 SCC 537
[28] (1996) 1 SCC 302
[29] (1996) 3 SCC 750
[30] (1997) 6 SCC 381
[31] (1998) 9 SCC 416
[32] (1999) 6 SCC 403
[33] (2001) 2 SCC 386
[34] (1995) 6 SCC 749
[35] (2003) 3 SCC 605
[36] (2003) 4 SCC 331
[37] (2006) 1 SCC 430
[38] (2006) 3 SCC 173
[39] (2006) 3 SCC 276